

HENRY H. SCHMID  
JUDITH A. SCHMID

IBLA 79-502

Decided October 24, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims null and void. CA MC 6279 and 6280.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims are conclusively deemed to have been abandoned by the owner and to be void.

APPEARANCES: Henry H. Schmid and Judith A. Schmid, pro sese.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated June 19, 1979, by the California State Office, Bureau of Land Management (BLM), declaring the Judy Ann and the Henry H. lode mining claims in Trinity County, California, void for failure to file evidence of assessment work.

Appellant's claims were located on June 30, 1977, and the location notices were filed with BLM on September 26, 1977. A proof of labor for both claims, covering the year September 1977 - September 1978 was filed on July 5, 1979.

[1] Under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located after October 21, 1976, is required to file either evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim, on or before December 30 of each calendar year following the calendar year in which the claim was located. Failure to file such instruments within the prescribed time period constitutes an abandonment of the claim and the claim is void under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. Silvertip Exploration & Mining, 43 IBLA 250 (1979); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978).

Since appellants' claims were located on June 30, 1977, appellants were required to file either evidence of assessment work or a notice of intention to hold the claims on or before December 31, 1978, the calendar year following the calendar year in which the claims were located. Since appellants' proof of labor did not reach BLM on or before the required date, BLM properly declared the claims abandoned and void.

Appellants state on appeal that they duly filed their proof of labor in the Trinity County recorder's office on October 5, 1978, and that thereafter it was sent to Sacramento. The fact remains, however, that the proof of labor is date stamped by BLM "Jul 5 10AM '79." Appellants admit they did not send their documents by registered or certified mail. Under these circumstances, appellants bear the consequences of untimely or nondelivery of their mailings. "A paper is filed when it is delivered to the proper official and by him received and filed." H. P. Saunders, Jr., 59 I.D. 41, 43 (1945).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman  
Administrative Judge

I concur:

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Douglas E. Henriques  
Administrative Judge

## ADMINISTRATIVE JUDGE GOSS DISSENTING:

Henry H. Schmid and Judith A. Schmid both state on appeal that the copy of the recorded proof of labor was mailed to BLM, Sacramento, California, from Redding, California, some time after November 8, 1978, but in time to comply with BLM requirements. I would request more particulars as to the asserted mailing, and refer that detailed information to BLM for review. BLM would have the opportunity to augment the record by incorporating its evidence herein, if deemed appropriate. <sup>1/</sup> It is understood that the California State Office has processed some 60,000 mining claim recordations under FLPMA. The possibility is thus present that the filing was timely received by BLM, but due to the extremely heavy workload, it was misfiled or misdirected in some manner.

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Joseph W. Goss  
Administrative Judge

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<sup>1/</sup> As to the type of evidence required by the courts, see Charlson Realty Company v. United States, 384 F.2d 434, 444-45 (Ct. Cl. 1967); Henry D. Friedman, 49 IBLA 97, 100-01 (1980) (dissent).

